

REMARKS

This is responsive to the Office Action of August 5, 2005. Currently, all of the claims, 1-87, in this reissue application stand rejected based upon one or more of U.S. Patent No. 4,026,129 ("Sternlieb"), U.S. Patent No. 4,181,514 ("Lefkowitz"), U.S. Patent No. 4,675,226 ("Ott"), U.S. Patent No. 5,356,402 ("Gillies"), U.S. Patent No. 4,128,686 ("Kyle"), and European Patent No. 261,904 ("Taylor"). No new amendments to the claims have been made in this reply.

Also, as a part of this reply, Applicant has included the declaration of E. Linwood Wright ("Linwood Declaration") pursuant to 37 C.F.R. §1.132. The Linwood Declaration is attached as Exhibit A.

Discussion of Applicants' "Yarn Face"

In response to the Board's Decision, Applicants previously amended each of the independent claims (nos. 1, 12, 23, 30, 39, 51, 58, 65, 70, and 80) in their April 29, 2005 reply further defining the stitch bonded "yarn face(s)" of the present invention to be effectively continuous such that the corresponding web surface is not generally exposed at the associated yarn face. Examiner, without making a rejection, maintains the position that the newly added claim language "effectively continuous" and "not generally exposed," which further defines the stitch bonded yarn face(s), is too subjective to be relied upon for distinguishing the present invention from the prior art. More specifically, Examiner asserts that Applicants' specification provides no objective instruction guiding one skilled in the art to quantify "effectively continuous."

Applicants disagree and refer Examiner to Paragraph 10 of the Linwood Declaration, wherein the Declarant E. Linwood Wright, an expert in the textile industry, states in part:

One skilled in the art appreciates that the additional terminology further defining the yarn faces of the present invention, in fact, provides a sufficient level of objectivity which can be relied upon for distinguishing the present invention from the prior art. Notably, Stern clearly discloses that the yarns for providing the yarn faces of Applicants' stitch bonded fabric are "of a sufficient density" such that the yarn segments 18', 18'' cooperate to define, respectively, top and bottom yarn faces of fabric. See col. 2, lines 52-59. To provide these yarn faces of fabric, Stern further explains that the yarns 18 are knitted in a flat stitch construction across the felt web upper surface to form underlaps as at 30 in FIG. 3 and overlaps as at 32 in FIG. 4, such underlaps 30 and overlaps 32 being the result of the usual knit construction provided by stitch bonding, such as with existing Malipol-type machines as are known in the art. See col. 2, line 66 to col. 3, line 5.

In view of the amount of detail contained in Applicants' specification, Mr. Wright further goes on to state:

Understandably, one of ordinary skill in the art is readily able to optimize the spacing between the rows of stitch bonded yarns, as based upon yarn density, for a particular application to provide the effectively continuous yarn face(s) of fabric, such stitched yarn face not allowing the felt web surface to be generally exposed upon close inspection. In other words, the felt, or felt web, cannot be readily seen, for example, through the top yarn face unless closely inspected using magnification and does not significantly protrude felt fibers against the patient's skin. Accordingly, "effectively continuous" means that the felt web surface is "not generally exposed," i.e. not readily viewable through the yarn face without magnification and not readily felt. See Linwood Declaration, Paragraph 10.

Clearly, the above remarks of Mr. Wright prove that Applicants' additional claim terminology, which includes "effectively continuous" and "not generally exposed," in fact, is definite

and provides a sufficient level of objectivity for one of ordinary skill in the art to determine the scope of the claimed invention and for further distinguishing the present invention from the prior art. Accordingly, Applicants now turn to Examiner's §102 and §103 rejections of the currently pending claims.

I. Section 102(b) Rejections

Claims 65, 67-69 stand rejected under § 102(b) as being anticipated by Sternlieb. Claims 30-37 and 51-64 stand rejected under § 102(b) as being anticipated by Lefkowitz. Claims 1, 3-9, 12, 14-20, 30, 32-38, 51, 53-56, 58, 59, 61-66, 68 and 69 stand rejected under § 102(b) as being anticipated by Ott. Claims 30, 32-36, 39, 41, 42, 46-51, 53-56, 65, 68, 69, 80, 83, 84, 86 and 87 stand rejected under § 102(b) as being anticipated by Gillies.

Applicants, to this point, have focused their efforts primarily on attempting to distinguish the claimed facing fabric over the cited art of Sternlieb, Lefkowitz, Gillies, and Ott by relying on differentiating characteristics of the stitch bonded "yam face." However, as now fully appreciated and further supported by the Linwood Declaration, Examiner has provided and applied an overly broad misinterpretation of Applicants' "felt web" claim terminology. As best explained by Mr. Wright, "Examiner has improperly defined Applicants' "felt web" and has provided a grossly, overly broad interpretation ...[insofar as Applicants'] "felt web"[is]...a nonwoven sheet of matted material...such matted material has structural integrity, i.e. tensile strength, in all directions." See Linwood Declaration, Paragraph 12. In view thereof, there are additional apparent distinctions over the cited art to be made but, first, Applicant clarifies below

the meaning of “felt web” for purposes of making these distinctions.

It is known that claims must be interpreted as broadly as their terms reasonably allow during examination. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). Without a clear definition in the specification, the words of the claims must be given their plain meaning, i.e. their ordinary and customary meaning, which is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application. *Phillips v. AWH Corp.*, 376 F.3d 1382, 75 USPQ2d 1321 (Fed. Cir. 2005) (*en banc*); *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk I, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003) (In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art).

Due to the absence of an explicit definition in the specification, Mr. Wright explains in Paragraph 12 of the Linwood Declaration what the ordinary and customary meaning of “felt web” is to a person of ordinary skill as of the time of the invention and, more specifically he states:

The use of “web,” in “felt web,” in Stern is clearly understood to mean simply “a layer or sheet” such that a “felt web” is a felt layer, i.e. a layer of felt. Concerning “felt,” this is a well known term of art in the textile industry and, as of the time of the invention, is understood to mean a nonwoven sheet of matted material of wool, hair, fur, or manufactured fibers (e.g. polyester, polypropylene, or

rayon) made by a combination of mechanical and chemical action, pressure, moisture, and heat, such matted material has structural integrity, i.e. tensile strength, in all directions [emphasis added].

Now that the additional claim language further defining “yarn face” can be objectively relied upon and the proper interpretation of “felt web” has been established, Applicants now turn to differentiating the references currently cited against Appellant.

It is well established that “a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). For the following reasons, Sternlieb, Lefkowitz, Gillies, and Ott clearly fail to teach each and every element of Applicants’ invention as recited at least in independent claims 1, 12, 23, 30, 39, 51, 58, 65, 70, and 80.

Sternlieb U.S. Patent No. 4,026,129

Sternlieb is directed to a dimensionally stable fabric especially useful for bed sheets, or for the uppers of footwear such as sneakers, athletic shoes, etc. This dimensionally stable fabric includes a layer or web of carded fibers 1 reinforced by a woven fabric layer 9, such layer of carded fibers being unbonded, uncompacted, and unmatted and of intermingled, non-parallel fibers. See Abstract; col. 1, lines 31-40; col. 2, lines 20-26.

Concerning the dimensionally stable fabric of Sternlieb, Mr. Wright states that “to one skilled in the art, these layers of unmatted carded fibers and of woven fabric are not felts.” See

Linwood Declaration, Paragraph 13. Accordingly, Sternlieb fails to teach Applicants' stitch bonded fabric face, which includes a felt web, or felt.

In addition, the two layers 1, 9 of the fabric are stitch bonded together by knitting yarns 11,13. The stitches from knitting yarns 11, 13 in Fig. 7 of Sternlieb are shown spaced significantly from one another, thereby providing a substantial amount of exposed scrim sheet 9 and web of cardable fibers 1. Web 1 also projects beyond the upper surface of the stitch bonding yarn segments 11 and 13. See col. 2, lines 57 to col. 3, line 2. In view thereof, the expert, Mr. Wright, states that "it is abundantly clear to one skilled in the art that Sternlieb fails to teach, disclose or otherwise suggest any yarn face as recited in Applicants' claims." See Linwood Declaration, Paragraph 11. As such, Sternlieb also fails to teach Applicants' stitch bonded yarn face.

Lefkowitz U.S. Patent No. 4,181,514

Lefkowitz discloses a stitch knitted filter for high temperature fluids including a fibrous batt 2 of relatively brittle fibers with a number of stitch yarns 3, 4 significantly spaced from one another as shown particularly in Figs. 3 and 7 of that reference.¹ Prior to the stitch knitting, it is generally necessary to support the batt or increase the batt integrity so that it can be metered into the stitch-knitting machine without damage or separation. See Abstract; col. 2, lines 55-60; col. 4, lines 19-24 and lines 55-58.

¹ The identified figures in Sternlieb and Lefkowitz are considered to accurately portray those respective inventions in contrast to Figs. 3 and 4 of the present case which are "greatly exaggerated" as expressly stated in the specification.

With respect to the stitch knitted filter, Mr. Wright explains that "to one skilled in the art, a batt of relatively brittle, unmatted fibers is not a felt." See Linwood Declaration, Paragraph 13. Accordingly, Lefkowitz fails to teach Applicants' stitch bonded fabric face, which includes a felt web, or felt.

Additionally, the stitch yarns 3, 4 "comprise metallic monofilament or multi filament yarns or glass multi filament yarns. Such yarns may be used alone or in combination with other non-metallic yarn materials." See col. 3, lines 1-4. Since Lefkowitz is directed to a filter, inherently, a fluid or other medium must pass through the fibrous bat and stitch yarns, and since the stitch yarns are metal, the material being filtered must escape the fibrous bat 2. Notably, as Mr. Wright states, "if the stitch yarns produced an effectively continuous yarn face as claimed in Applicants' invention, then the filtered material is not able to escape the allegedly effectively continuous face. Therefore, the stitch yarns in Lefkowitz cannot be effectively continuous." See Linwood Declaration, Paragraph 11. Therefore, Lefkowitz also fails to teach Applicants' stitch bonded yarn face.

Ott U.S. Patent No. 4,675,226

The Ott patent is directed to a stitch bonded composite wiper 70 having strength and absorbency performance and other features for a variety of industrial, institutional and health care wiping uses. The stitch bonded composite wiper 70 includes a middle layer 78 of cellulose natural fibers and outer layers 76, 74 of continuous filament thermoplastic fibers, meltblown thermoplastic microfibers, or rayon fibers. See Abstract; col. 2, lines 30-34; Fig. 2.

Concerning the stitch bonded composite wiper, Mr. Wright states that these “unmatted inner and outer layers are not felt to one skilled in the art.” See Linwood Declaration, Paragraph 13. Accordingly, Ott fails to teach Applicants’ stitch bonded fabric face, which includes a felt web, or felt.

Gillies U.S. Patent No. 5,356,402

Gillies discloses a reusable diaper including a median layer 14 of carded and crosslaid viscose rayon fibers having a cross-section of substantially rigid multi-limbed configuration. This median layer is necessarily stitch bonded so that it can maintain dispersion and absorbency integrity, and then is hidden within the diaper by being incorporated between outer layers 12 and 16. See Abstract; col. 5, lines 23-27; col. 5, line 64 to col. 6, line 13; Fig. 1.

With respect to the reusable diaper of Gillies, Mr. Wright states that “to one skilled in the art, this median layer of carded and crosslaid viscose rayon fibers is not matted and, thus, not a felt.” See Linwood Declaration, Paragraph 13. As such, Gillies, like Sternlieb, Lefkowitz, and Ott, also fails to teach Applicants’ stitch bonded fabric face, which includes a felt web, or felt.

For all of the above reasons, Sternlieb, Lefkowitz, Gillies, and Ott clearly fail to teach each and every element of Applicants’ stitch bonded fabric face as recited at least in independent claims 1, 12, 23, 30, 39, 51, 58, 65, 70, and 80.

II. Section 103 Rejections

Claims 1, 3-9, 12, 14-20, 23, 26-29, 37, 38, 43, 58, 61-64, 66, 70, 71, 73, 74, 76-79 and 81 are rejected under § 103(a) as being unpatentable over Gillies in view of Ott. Claims 10, 11, 21, 22 and 57 are rejected under § 103(a) as being unpatentable over Gillies in view of Ott. Claim 25 is rejected under § 103(a) as being unpatentable over Gillies in view of Ott, Lefkowitz and Kyle. Claims 40 and 82 are rejected under § 103(a) as being unpatentable over Gillies in view of Taylor. Claims 31, 44, 45, 52, 67 and 85 are rejected under § 103(a) as being unpatentable over Gillies in view of Sternlieb. Claims 1-23, 25-39, 41-71, 73-81 and 83-87 are rejected under § 103(a) as being unpatentable over Kyle in view of Gillies, Ott and/or Sternlieb. Claims 24, 40, 72 and 82 are rejected under § 103(a) as being unpatentable over Kyle in view of Gillies, Ott and/or Sternlieb and further in view of Taylor.

The § 103 rejections in this Office Action combine the primary references of Sternlieb, Lefkowitz, Ott and Gillies with each other or other identified secondary prior art, i.e. Kyle and Taylor. Applicants distinguishing comments set out above with respect to the Sternlieb, Lefkowitz, Ott and Gillies references apply equally to the § 103 rejections, and these rejections are in error for the same reasons.

Additionally, nowhere in the § 103 rejections is it asserted or alleged that Kyle or Taylor teach, suggest, or otherwise imply an effectively continuous yarn face as that term is defined and used in Applicants' claims. Even so, Mr. Wright asserts that "Kyle and Taylor also fail to disclose the stitch bonded yarn face of the present invention insofar as neither reference teaches,

suggests, or implies providing a yarn face that is effectively continuous so that the felt web is not generally exposed.” See Linwood Declaration, Paragraph 11.

The other § 103 rejections directed to Applicants’ independent claims (nos. 1, 12, 23, 30, 39, 51, 58, 65, 70, and 80) are the rejections over Kyle in view of Gillies, Ott and/or Sternlieb.² Examiner, in rejecting these claims, relies on the disclosure of Gillies, Ott, and/or Sternlieb to provide Applicants’ yarn face. However, as discussed above and as further stated in Paragraph 11 of the Linwood Declaration, Sternlieb fails to disclose such yarn face. Even arguing that Ott and Gillies disclose stitch bonded yarn faces, there simply is no motivation for one skilled in the art to combine Gillies and/or Ott with Kyle to arrive at Appellant’s stitch bonded fabric.

More specifically, Kyle appears to provide an assembly for the management of incontinence comprising at least one layer of non-absorbent hydrophobic textile material through which urine can freely pass and at least one layer of absorbent hydrophilic textile material behind the non-absorbent layer or layers to receive and absorb urine passing through the non-absorbent layer or layers. The absorbent layer is formed of aligned cellulosic staple fibres formed into a cross-laid web and needled to form a felt while, preferably, the non-absorbent material is a non-woven felted fabric. The non-absorbent layer can be sewn, bonded, quilted or welded to the needle felted absorbent layer. Advantageously, the assembly of Kyle purportedly provides absorbent properties superior to conventional paper incontinence pads. See col. 4, lines 37-53 and lines 65-68; col. 5, lines 22-30; col. 8, lines 31-37; Example 1; Fig. 5.

² Claims 1-23, 25-39, 41-71, 73-81 and 83-87 are rejected under § 103(a) as being unpatentable over Kyle in view of Gillies, Ott and/or Sternlieb.

In view of the disclosure of Kyle, Mr. Wright states:

Noticeably lacking from Kyle's assembly is Applicants' yarn face for providing patient comfort. In fact, there simply is no teaching, suggestion, or implication in Kyle motivating one of skill in the art to provide the assembly with an effectively continuous stitch bonded yarn face as Kyle clearly concerns itself with providing only a better absorbing incontinent pad. And, even assuming *arguendo* that one would consider the possibility that stitch bonding may be used to integrate the two layers of material in Kyle, there still lacks any motivation whatsoever to provide Kyle's incontinent pad with the specific type of stitch bonded yarn faces, i.e. the effectively continuous yarn faces, of Ott and/or Gillies. As such, one skilled in the art simply is not motivated to provide Applicants' yarn face of fabric about the felt layer(s) of Kyle. See Linwood Declaration, Paragraph 15.

In addition, with specific reference to Gillies, it is simply nonsensical to combine the stitch bonding of Gillies with Kyle to arrive at Applicants' invention as is further explained by Mr. Wright, who states:

Gillies' stitch bonded median layer, as already discussed above, is incorporated between outer layers 12 and 16, thereby effectively hiding within the diaper any yarn face presented on the surface of the median layer. In stark contrast, Applicants' stitch bonded fabric includes a stitch bonded yarn face on the outside of the product to provide a soft, comfortable surface for a patient. Clearly, it is nonsensical, certainly to one skilled in the art, to combine Gillies' stitch bonded median layer with any reference, let alone Kyle, to provide Applicants' stitch bonded fabric having a yarn face that is situated on the outside of the product. See Linwood Declaration, Paragraph 16.

Finally, one skilled in the art also would not combine Ott and/or Gillies with Kyle because "neither Ott nor Gillies teach, suggest, or imply replacing their stitch bonded fabrics with a felt insofar as each of the non-felt fabrics of Gillies and Ott are purposefully selected to obtain

desired outcomes” and further because there is no motivation to combine “the wiper product of Ott with an incontinent pad, such as is disclosed in Kyle, in an effort to arrive at Applicants’ fabric face product.” See Linwood Declaration, Paragraph 16.

Accordingly, for all of the above reasons, one skilled in the art would neither look to Sternlieb, Lefkowitz, Ott, Gillies, Taylor nor Kyle, alone or in any combination, to arrive at Applicants’ claimed invention, i.e. a stitch bonded fabric.

Conclusion

As a result of the remarks given herein, Applicants submit that the rejections of claims 1-87 have been overcome. Therefore, Applicants respectfully submit that this case is in condition for allowance and requests allowance of the pending claims.

If Examiner believes any detailed language of the claims requires further discussion, Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. Applicants also have submitted all fees believed to be necessary herewith. Should any additional fees or surcharges be deemed necessary, Examiner has authorization to charge fees or credit any overpayment to Deposit Account No. 23-3000.

Respectfully submitted,
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